

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA

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NORTHERN DIVISION

HORACE MILTON BLACK

*

Petitioner

*

v.

* Civil Action No. 2:05cv1178-WKW-DRB

UNITED STATES OF AMERICA

*

[WO]

Respondent

*

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

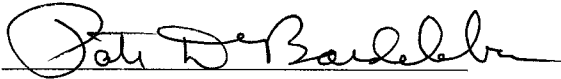
OBJECTION TO RECOMMENDATION OF THE MAGISTRATE JUDGE

COMES NOW the above named Horace Milton Black, and through counsel, objects to the Recommendation of the Magistrate Judge. As grounds for said objection counsel avers the following;

1. The Petitioner specifically objects to section D. of the Magistrate's Recommendation wherein she finds that Attorney Smyly's testimony was more creditable than his own testimony. Mr. Black testified that he instructed Attorney Smyly to appeal the Court's refusal to allow him to withdraw his plea at sentencing. The record is clear that one main issue at sentencing was Mr. Black's motion filed by Attorney Smyly moving the Court to allow Mr. Black to withdraw his plea of guilty. Mr. Black avers that he testified truthfully that he asked Attorney Smyly to appeal and that Attorney Smyly said he would do so.

WHEREFORE counsel moves this Court to rehear the testimony allowing the District Court to assess the credibility of the witnesses.

Respectfully submitted this the 12th day of December, 2006.

A handwritten signature in cursive script, reading "Pate DeBardleben", written over a horizontal line.

Pate DeBardleben, Attorney for Horace Black

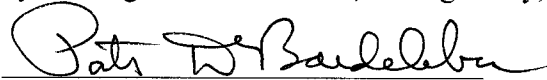
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2835 Zelda Road, Montgomery, AL 36106

334-213-0609

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the Honorable Clark Morris
by mailing to P.O. Box 197, Montgomery, AL 361011-0197 this the 12th day of December, 2006.

A handwritten signature in cursive script, reading "Pate DeBardleben", written over a horizontal line.

Pate DeBardleben